



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

DEC 28 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert J. Dieter, Esq.
Redfer, McKinley, Mason & Dieter
Attorneys at Law
315 Clay Street
P.O. Box 627
Cedar Falls, Iowa 50613

Re: Big Woods Auto, EPA Docket No. 88-H-0013
Coffman Body Shop, EPA Docket No. 88-H-0014
Cedar Falls, Iowa

Dear Mr. Dieter:

Enclosed please find a copy of the fully executed Consent Agreement and Consent Order for each of the above-referenced facilities. Pursuant to paragraph 41, the Agreements become effective upon receipt.

Thank you for your assistance and cooperation in this matter.

Happy New Year!

Sincerely yours,

A handwritten signature in cursive script that reads "E. Jane Kloeckner".

E. Jane Kloeckner
Assistant Regional Counsel

cc: ✓ Beth Koesterer, RCRA



R00127721
RCRA RECORDS CENTER

RECEIVED

DEC 29 1988

IOWA SECTION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

IN THE MATTER OF)	
)	Docket No. VII 88-H-0013
MELVIN CUNNINGHAM d/b/a)	
BIG WOODS AUTO)	
)	
CEDAR FALLS, IOWA)	
)	
Respondent)	CONSENT AGREEMENT
)	AND
Proceedings under Section)	CONSENT ORDER
3008(a)(1) and (g) of the)	
Resource Conservation and)	
Recovery Act of 1976, as amended,)	
42 U.S.C. § 6928(a)(1) and (g).)	

I. PRELIMINARY STATEMENT

1. This proceeding was initiated pursuant to Section 3008(a)(1) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a)(1) and (g). The Regional Administrator of the United States Environmental Protection Agency (EPA), Region VII, issued a Complaint, Compliance Order and Notice of Opportunity for Hearing to the Respondent, Melvin Cunningham, doing business as Big Woods Auto, on March 31, 1988. The Complaint alleged violations of Section 3005 (a) of RCRA, 42 U.S.C. § 6925(a), and 40 C.F.R. Part 264.

2. The U. S. EPA Region VII, and Melvin Cunningham, doing business as Big Woods Auto (hereinafter Respondent) have each agreed to settlement of these proceedings without adjudication of fact or law.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint, neither admits nor

denies the factual allegations of the Complaint, agrees to pay a civil penalty in the amount of \$250.00 and agrees to comply with the terms of the Consent Order set forth below.

4. Respondent waives its right to a hearing on any issue of fact or law set forth in any pleading filed in or order issued in this matter.

II. PARTIES BOUND

5. This Consent Agreement and Consent Order shall apply to and be binding upon Respondent, its officers, directors, employees, agents, successors and assigns thereof, and upon all persons including contractors, subcontractors and consultants, acting under or on its behalf.

6. No change in ownership of Respondent's property or in status of Respondent's business, Big Woods Auto, shall in any way alter Respondent's responsibilities under this Consent Agreement and Consent Order.

7. The undersigned representative of each party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Consent Order and to execute and to bind legally such party to this Consent Order.

III. FINDINGS OF FACT

The U. S. EPA Region VII hereby makes the following findings of fact:

8. Melvin Cunningham is doing business as Big Woods Auto.

9. At all times relevant to this proceeding, Respondent owned and operated a salvage yard facility located at 3305 Big Woods Road, Cedar Falls, Iowa (hereinafter "the facility").

10. On or about February 11, 1987, a RCRA Compliance

Evaluation Inspection was conducted at the facility by an authorized EPA representative pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. At the time of this inspection, Respondent was storing 55 gallon drums which contained waste paint thinner and waste solvents from cleaning painting equipment. Such wastes are listed by EPA as hazardous wastes.

11. Respondent received the drums of hazardous waste from an off-site generator. The initial storage of the material occurred in January 1983.

12. A total of approximately 500 gallons of hazardous waste were transported in two shipments to the facility and stored at the facility.

13. The hazardous waste was transported to and stored at the facility in accordance with an agreement between Respondent and Ronald Coffman, owner of Coffman Body Shop, located in Cedar Falls, Iowa. Under the terms of this agreement, storage at the facility would continue until Ronald Coffman arranged for disposal or treatment. The Respondent was not compensated for the storage of the hazardous waste.

14. Respondent manifested the hazardous waste off-site in February 1987. The hazardous waste was transported by a waste hauler with EPA identification number MND980990667 to a disposal facility with EPA identification number MND980990667.

15. The hazardous wastes stored at the facility are listed hazardous waste F003 and F005, identified at 40 C.F.R. § 261.31.

16. Respondent did not submit to EPA at any time a Part A or Part B permit application for the storage of hazardous waste

at the facility.

17. Respondent's acceptance from an off-site generator and subsequent storage of hazardous waste from January 1983 through February 1987, without having Interim Status or a RCRA permit, subjects Respondent to RCRA regulations as a storage facility according to 40 C.F.R. Part 264.

18. Respondent did not meet the standards of 40 C.F.R. Part 264 for the storage of hazardous waste at the facility.

19. The Respondent's hazardous waste storage area is subject to the closure and financial responsibility requirements of 40 C.F.R. Part 264 Subparts G and H, respectively.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the foregoing findings of fact, the U. S. EPA Region VII has determined that:

20. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6904(15).

21. The Big Woods Auto facility is a "facility" within the meaning of 40 C.F.R. § 260.10.

22. Respondent owns and operates a facility within the meaning of Section 3004 of RCRA, 42 U.S.C. § 6924.

V. ORDER ON CONSENT

23. Respondent agrees and is hereby ORDERED to pay a civil penalty of \$250.00 within thirty (30) days of the effective date of this Consent Agreement and Consent Order. Payment shall be by cashier's or certified check made payable to the United States Treasury, shall indicate the Docket Number of the Complaint, and remitted to:

EPA - Region VII
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

A copy of the check and transmittal letter shall be mailed to Elizabeth Koesterer, EPA Region VII.

24. IT IS FURTHERMORE ORDERED that Respondent take the following corrective actions within the time periods specified for each.

a. Within sixty (60) days of the effective date of this Order, develop and submit a closure plan to EPA for review and approval, which meets the standards of 40 C.F.R. § 264.178 and 40 C.F.R. 264 Subpart G. The closure plan must include a sampling plan designed to determine the horizontal and vertical extent of releases, if any, of the waste paint material at the locations of storage at the facility. The closure plan must also include a closure cost estimate as required by 40 C.F.R. §264.142.

b. Implement the closure plan upon EPA approval, in accordance with the implementation schedule therein. The approved closure plan, inclusive of any modifications made by EPA, shall be incorporated into and become part of this Consent Order.

c. Within sixty (60) days of the effective date of this Order, establish and thereafter maintain financial assurance for closure of the hazardous waste storage area(s) in accordance with 40 C.F.R. § 264.143. Financial assurance must be maintained until Respondent is released from this requirement by the Regional Administrator, in accordance with 40 C.F.R. § 264.143(i).

d. Within sixty-five (65) days of the effective date of this Order, submit a copy of the financial instrument developed in accordance with the establishment of financial assurance for closure of the hazardous waste storage area(s).

e. Within thirty (30) days of the effective date of this Order, Respondent shall establish and maintain, until receipt of approval of final closure certification for all hazardous waste management units at the facility, financial responsibility for sudden accidental occurrences arising from operations of the facility as described in 40 C.F.R. § 264.147. In the event that Respondent cannot obtain the necessary liability coverages, Respondent shall, until receipt of EPA approval of final closure certification for all the hazardous waste management units at the facility:

i) Continue to attempt to establish liability coverage in the amount required by 40 C.F.R. § 264.147(a) as described in 40 C.F.R. § 264.147; and

ii) Submit documentation to EPA on a semi-annual basis of all efforts to obtain said liability coverage as well as documentation of all liability coverage that Respondent has been able to obtain.

f. Within sixty (60) days of completion of closure of the container storage area(s), submit to EPA certification of closure, as required by 40 C.F.R. § 264.115. This certification shall contain all information and documentation, including analytical results, necessary to support the certification. the information and documentation as specified in 40 C.F.R. § 264.115.

25. Immediately, Respondent will not operate the Big Woods Auto facility for the treatment, storage or disposal of hazardous waste unless Respondent qualifies for and receives a RCRA Part B hazardous waste permit for such activity.

26. All notices, whether verbal or written, and all written documents required to be submitted to EPA pursuant to this Order shall be directed to:

Elizabeth Koesterer
WSTM/RCRA/IOWA
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone: (913) 236-2887

27. The EPA and its authorized representatives shall have access to the Big Woods Auto facility, which is the subject of this proceeding, at all times necessary to monitor the implementation of activities conducted pursuant to this Order.

VI. QUALITY ASSURANCE

28. Throughout all sample collection and analysis activities, Respondent shall use quality assurance, quality control, and chain-of-custody procedures approved by EPA. In addition, Respondent shall:

a. Consult with EPA in planning for, and prior to, field sampling and laboratory analysis. Respondent will provide at least thirty (30) days notice to EPA before obtaining the final field samples at the completion of closure activities.

b. Notify EPA in advance as to which laboratories will be used by Respondent and ensure that EPA personnel, including their authorized representatives, have reasonable access to the

laboratories and personnel used for analyses.

c. Ensure that all laboratories used by Respondent for analyses perform such analyses according to EPA-approved methods (i.e., SW-846) or other methods deemed satisfactory by EPA. If methods other than EPA-approved methods are to be used, Respondent shall submit all protocols to be used for analyses to EPA for approval at least thirty (30) days prior to the commencement of analyses.

d. Ensure that laboratories used by Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of a reasonable number of known samples provided by EPA to demonstrate the quality of the analytical data.

VII. CONFIDENTIAL INFORMATION

29. Respondent may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Consent Order. The information covered by such a claim will be disclosed by EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or occurrence of a

certain event, the notice should so state. If no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to Respondent. Environmental contamination data shall not be deemed confidential.

VIII. RESERVATION OF RIGHTS

30. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent and to request that Respondent perform tasks in addition to those stated in the Closure Plan.

31. EPA hereby reserves all its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, including without limitation the assessment of penalties under Section 3008(g) of RCRA, 42 U.S.C. § 6928(g). This Consent Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law enforcement authority of the United States.

32. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligation to comply with RCRA or any other applicable local, State or Federal laws and regulations.

33. The entry of this Consent Order and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking

action pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), should EPA determine that such actions are warranted.

34. This Consent Order is not intended to be nor shall it be construed as a permit. This Consent Order does not relieve Respondent of any obligation to obtain and comply with any local, State or Federal permits.

35. Furthermore, if EPA determines that any activities have caused or may cause a release of hazardous waste, hazardous constituents, or a pollutant or contaminant, or a threat to public health or the environment, EPA may order Respondent either to cease further implementation of this Consent Order for such period of time as may be necessary to abate such release or threat of release or to undertake any other action which EPA determines is necessary to abate such release or threat of release, or both.

IX. OTHER CLAIMS

36. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause or action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

X. OTHER APPLICABLE LAWS

37. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the

requirements of all applicable local, State and Federal laws and regulations. Respondent shall obtain or cause their representatives to obtain all permits and approvals necessary under such laws and regulations.

XI. SUBSEQUENT MODIFICATION

38. The Consent Order may only be amended by mutual agreement of the parties thereto. Such amendments shall be in writing, shall have as their effective date the date on which they have been signed by all parties hereto and shall be incorporated into this Consent Order.

39. All reports, plans, specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Consent Order.

XII. TERMINATION AND SATISFACTION

40. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, but not including any continuing obligations or promises (i.e., reservation of rights) have been satisfactorily completed. EPA will issue such notice after receipt of notice by Respondent that they have completed the requirements of the Consent Order.

XIII. EFFECTIVE DATE

41. This Consent Agreement and Consent Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from such date of receipt, unless otherwise provided in this Consent Agreement and Consent Order.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

For Melvin Cunningham,
doing business as Big Woods Auto:

Melvin D. Cunningham
Respondent

20 DEC. 88
Date

E. Jane Kloeckner
E. Jane Kloeckner
Assistant Regional Counsel
U.S. Environmental Protection
Agency
726 Minnesota Avenue
Kansas City, Kansas 66101
(913) 236-2809

22 December 1988
Date

IT IS SO ORDERED

David A. Wagoner
David A. Wagoner
Director, Waste Management
Division
U.S. Environmental Protection
Agency
Region VII

Dec 23, 1988
Date

CERTIFICATE OF SERVICE

I hereby certify that the original of the Consent Agreement and Consent Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; and copies were sent certified mail, return receipt requested to Robert J. Dieter, Esq., Redfern, McKinley, Mason & Dieter, Attorneys at Law, 315 Clay Street, P.O. Box 627, Cedar Falls, Iowa 50613, on this 28th day of December, 1988.

Carol Miller